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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

SQA & KC INTERNATIONAL,
S.A.,

Plaintiff and Respondent,

v.

RICHARD ASHBEE,

Defendant and Appellant.

B286416

(Los Angeles County
Super. Ct. No. BC607302)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael P. Linfield, Judge. Affirmed.

Law Offices of James W. Bates and James W. Bates for Defendant and Appellant.

Ryu Weimortz Murphy and Thomas J. Ryu for Plaintiff and Respondent.

Richard Ashbee (Ashbee) appeals from a judgment entered against him for fraud and in favor of SQA & KC International, S.A., (KCI) after a bench trial. Ashbee contends there is insufficient evidence to support the trial court's findings that Ashbee intended to defraud KCI and that KCI's reliance on Ashbee's statements was justified. We find there was substantial evidence to support both findings and affirm the judgment.

BACKGROUND

KCI is a garment manufacturer that entered into a series of purchase agreements to sell apparel to Regent Global Sourcing, LLC (RGS). RGS failed to pay KCI and became indebted to KCI for over \$400,000. Ashbee is the president of RGS and he claimed RGS's inability to pay was due to the loss of two clients that provided substantial income to RGS.

Ashbee and KCI's president, Chul Kim (Kim), negotiated a payment plan for RGS to satisfy the debt. Kim rejected RGS's offer to pay KCI \$10,000 per month for six months. Ashbee then offered to satisfy the debt through future purchase orders and said RGS would pay an additional 25 cents for each garment on its next two orders, resulting in a debt payment of approximately \$8,500. Ashbee said the orders would be perfect for KCI and also alluded to the possibility that RGS would pay an additional dollar per garment for future orders once RGS could increase its margins. Kim accepted the offer, believing that RGS might be able to make its money back from new orders and then pay down the debt. KCI fulfilled the orders for RGS, but never received payment.

Kim met with Ashbee in person to discuss the debt. Ashbee gave Kim three checks totaling \$230,000. Kim held the checks for several months before trying to deposit them. When Kim

tried to cash the checks, they were rejected by the bank and two of them were marked “stop payment.” (Capitalization omitted.)

KCI sued RGS and Ashbee individually for breach of contract, fraud, and common counts. After the parties entered into a stipulated judgment in favor of KCI and against RGS, the trial court conducted a short bench trial on KCI’s remaining fraud claim against Ashbee individually for the promises made regarding the last purchase orders. KCI introduced the unpaid invoices and the correspondence between Kim and Ashbee that detailed the parties’ negotiations. Kim and Ashbee also testified.

After hearing argument, the trial court ruled in favor of KCI. It reasoned that, while it was not the wisest of business decisions for KCI to enter into the final purchase agreements with RGS, it was still reasonable to do so because KCI thought it could recoup some of the money, if only a small amount. The trial court entered judgment against Ashbee in the amount of the last unpaid invoices. Ashbee timely appealed.

DISCUSSION

We review the trial court’s factual findings from a nonjury trial for substantial evidence. (*Jameson v. Five Feet Restaurant, Inc.* (2003) 107 Cal.App.4th 138, 143.) When two or more inferences can reasonably be deduced from the facts, we cannot substitute our own deductions for those of the trial court. (*Ibid.*) Similarly, we will not reverse a trial court’s credibility findings unless that testimony is incredible on its face or inherently improbable. (*Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 201.) Our review is limited to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, to support the judgment. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873–874.) “If such substantial

evidence be found, it is of no consequence that the trial court believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.” (*Id.* at p. 874, italics omitted.)

Ashbee’s first contention is that the record lacks sufficient evidence to show he intended to defraud KCI. To prevail on its claim for promissory fraud, KCI had to show that Ashbee had no intention of fulfilling his promise. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) Ashbee contends that KCI’s only evidence of intent was the bad checks that Ashbee gave to Kim for the initial debt but were only collaterally related to the last purchase orders. This is inaccurate. To prove intent, KCI introduced the unpaid invoices, the correspondence between Kim and Ashbee, as well as their respective testimony. Kim testified that KCI never paid the outstanding debt despite Ashbee’s repeated promises to do so. Further, on cross-examination, Ashbee admitted that he had been paid for some of the apparel supplied by KCI, but continued to defer payment of the debt. From these facts the trial court could reasonably infer that when Ashbee made the promise to pay for the new orders plus the additional 25 cents per garment, he had no intention of doing so.

Ashbee also contends that the record lacks sufficient evidence to support the trial court’s findings that KCI’s reliance on Ashbee’s statements was justified, i.e., reasonable. To prove justifiable reliance, KCI must show that it was reasonable to believe Ashbee’s statements in the light of its own knowledge and experience. (*Whiteley v. Philip Morris, Inc.* (2004) 117 Cal.App.4th 635, 684.)

Ashbee’s argument in the trial court and on appeal appears to be that he is not credible and thus it was not reasonable for

KCI to rely on his representations. As the trial court noted, Ashbee's defense to KCI's justifiable reliance was that he was unreliable. Ashbee points to portions of the record which show that Kim was unhappy that RGS had not paid the outstanding amount despite repeated promises to do so, as well as Kim's knowledge of RGS's reputation of not paying its debts to other garment manufacturers. Ashbee also calls into question KCI's rejection of RGS's first offer to pay down the debt by \$10,000 per month, but then to accept the offer which only paid the debt down by \$8,500. But, as Kim explained, he thought that RGS could make money off of the new purchase orders and then use that money to pay off its debt to KCI. Ashbee represented that he already had new orders that were perfect for KCI and Kim assumed he could at least recoup some money though the amount would be small. Accordingly, there was sufficient evidence to show KCI justifiably relied on Ashbee's statements.

DISPOSITION

The judgment is affirmed. SQA & KC International, S.A. is awarded its costs on appeal.

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DHANIDINA, J.

We concur:

LAVIN, Acting P. J.

EGERTON, J.